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CENTRAL DISTRICT OF CALIFORNIA	
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD ZAMORA,

Petitioner,

vs.

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Respondent.

) Case No. CV 02-1463-DDP(RC)

MEMORANDUM DECISION AND ORDER
ON REQUEST FOR EXTENSION OF TIME
TO FILE FEDERAL HABEAS CORPUS
PETITION PENDING EXHAUSTION OF STATE
REMEDIES

**THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).**

On February 20, 2002, petitioner Richard Zamora, a person in state custody proceeding pro se and in forma pauperis, filed a "Request for Extension of Time to File Federal Habeas Corpus Petition Pending Exhaustion of State Remedies" **without filing an actual habeas corpus petition.** The petitioner provides no information regarding the date, place or nature of his conviction,¹ and further provides limited and vague information regarding the appeal, any review or exhaustion of state court remedies.² Rather, the petitioner states that he is requesting a "9 month's [sic]" extension of time to

¹Without this information, the Court is unable to determine whether venue is proper. See 28 U.S.C. § 2241(d).

²Without this information, the Court is unable to determine whether jurisdiction is proper. See 28 U.S.C. § 2254(b) and (c).

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1 file his federal habeas corpus petition because, among other things, he "is in the
 2 process of exhausting state remedies[, and] furthermore, . . . is not assisted by counsel
 3 and is a layman to the law." Finally, the petitioner does not set forth the claims **to be**
 4 **presented** in his habeas corpus petition.

5

6 DISCUSSION

7 Rule 1 of the Rules Governing Section 2254 Cases in the United States District
 8 Courts ("Rules") provides that the Rules govern the procedure in the district courts on
 9 an application under 28 U.S.C. § 2254 by a person in custody pursuant to a judgment of
 10 a state court. 28 foll. U.S.C. § 2254, Rule 1. Rules 2(a) and 2(c) specifically provide
 11 that the application shall be substantially in the form of a petition for a writ of habeas
 12 corpus, as annexed to the Rules, in which the state officer having custody of the
 13 applicant is named as respondent. Id., Rule 2. Rule 2(d) provides that the petition shall
 14 be limited to the assertion of a claim for relief against the judgment or judgments of a
 15 single state court. Id. Finally, Rule 2(e) provides that "[i]f a petition . . . does not
 16 substantially comply with the requirements of rule 2 or rule 3, it may be returned to the
 17 petitioner, if a judge of the Court so directs, together with a statement of the reason
 18 for its return. . . ."³ Id. (emphasis added).

19

20 Here, petitioner has failed to file a petition for writ of habeas corpus on the
 21 prescribed form, and has failed to provide the pertinent information, thereby not
 22 complying with Rule 2(c), (d), and (e). Nevertheless, the clerk filed the "Request,"

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24

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26 ³ The Advisory Committee's Notes to Rule 2 explain that, under subdivision
 27 (e), the clerk is allowed to return "an insufficient petition to the petitioner, and . . .
 28 [a]ny failure to comply with the requirements of Rule 2 or 3 is grounds for
 insufficiency. . . ."

1 failing to ascertain that it does not, on its face, comply with Rule 2.⁴ This Court,
 2 however, cannot ignore the fact that no habeas corpus petition has been filed by
 3 petitioner.

4

5 The petitioner candidly states he has not exhausted his state court remedies.
 6 However, a state prisoner must exhaust his state court remedies before petitioning for a
 7 writ of habeas corpus in federal court. 28 U.S.C. §§ 2254(b) and (c); O'Sullivan v.
 8 Boerckel, 526 U.S. 838, 842-43, 119 S.Ct. 1728, 1731, 144 L.Ed.2d 1 (1999); Rose v.
 9 Lundy, 455 U.S. 509, 515-16, 102 S.Ct. 1198, 1201-02, 71 L.Ed.2d 379 (1982);
 10 Calderon v. United States Dist. Court (Taylor), 134 F.3d 981, 984-85 (9th Cir.), cert.
 11 denied, 119 S.Ct. 274 (1998). "The exhaustion-of-state-remedies doctrine, now
 12 codified [at] 28 U.S.C. §§ 2254(b) and (c), reflects a policy of federal-state comity, an
 13 accommodation of our federal system designed to give the State an initial opportunity to
 14 pass upon and correct alleged violations of its prisoners' federal rights." Picard v.
 15 Connor, 404 U.S. 270, 275, 92 S.Ct. 509, 512, 30 L.Ed.2d 438 (1971) (internal
 16 quotation marks, citations and footnote omitted); O'Sullivan, 528 U.S. at 844-45, 119
 17 S.Ct. at 1732; Crotts v. Smith, 73 F.3d 861, 865 (9th Cir. 1996). "The exhaustion
 18 doctrine is principally designed to protect the state courts' role in the enforcement of
 19 federal law and prevent disruption of state judicial proceedings." Rose, 455 U.S. at
 20 518, 102 S.Ct. at 1203.

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22 Rule 4 provides that "[i]f it plainly appears from the face of the petition and any
 23 exhibits annexed to it that the petitioner is not entitled to relief in the district court, the

24

25 ⁴ Rule 3(b) provides that "[u]pon receipt of the petition and the filing fee, or an
 26 order granting leave to the petitioner to proceed in forma pauperis, and having
 27 ascertained that the petition appears on its face to comply with rules 2 and 3,
 28 the clerk of the district court shall file the petition and enter it on the docket in his
 office. . ." 28 foll. U.S.C. § 2254, Rule 3 (emphasis added).

1 judge shall make an order for its summary dismissal. . . ." 28 foll. U.S.C. § 2254,
2 Rule 4. Here, it appears on the face of the "Request" that the petitioner has not
3 complied with the Rules, and the instant action, thus, should be summarily dismissed
4 without prejudice.

5

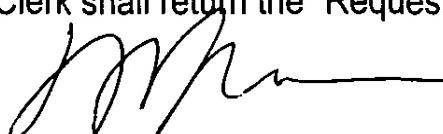
6 **ORDER**

7 IT IS ORDERED that petitioner's "Request For Extension of Time To File Federal
8 Habeas Corpus Petition Pending Exhaustion of State Remedies" be DENIED without
9 prejudice.

10

11 IT IS FURTHER ORDERED that the Clerk shall return the "Request" to the
12 petitioner.

13 DATE: 3-20-02



14 DEAN D. PREGERSON
UNITED STATES DISTRICT JUDGE

15 PRESENTED BY:

16 DATE: Feb. 25, 2002

17 Rosalyn M. Chapman
18 ROSALYN M. CHAPMAN
UNITED STATES MAGISTRATE JUDGE

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